

# ZONINGPRACTICE

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## PRACTICE CODE EVALUATION



# Monitoring and Evaluating a Zoning Code

By Arthur Lentelucci, AICP

## Practical Suggestions to Ensure Quality in Code Performance

The City of Rochester, New York, adopted a new zoning code in the fall of 2002, which took effect on January 1, 2003. The code included several new approaches to land-use regulation. Citywide design guidelines and standards were applied for the first time. Land use in the center city was regulated entirely by design criteria, foregoing traditional use controls. The city took an entirely unconventional approach to the regulation of nonconformities. Finally, there was a 180-degree shift in the regulation of off-street parking.

Significant public debate attended these new approaches amid some uncertainty as to whether the new regulations would or could be effective. The city decided to inject as much flexibility and discretion into the code as possible so that it would not always be necessary to amend the code to adjust to new circumstances. Increased flexibility and discretion often lead to concerns regarding the potential for discretionary abuse as well as possible arbitrary decision making. In spite of the inherent checks and balances built into the code, there was an obvious need for oversight.

In order to assure proponents and detractors as well, the mayor and the city council decided to require a report on the effectiveness and performance of the new code 24 months after its adoption. They included this mandate in the code as one of the responsibilities of the director of zoning. The experience of conducting this evaluation provided me with the basis of this article.

This is not a scientific or technical methodology, either in terms of the type of research or the means of extracting and organizing information. Rather, it is a report on an experience to share with other practitioners. It stresses the importance of making a commitment to evaluate the tools we use in regulating the use of land, especially when the limits of regulation are being questioned across the country—a fact poignantly illustrated by the passage of Measure 37 in Oregon last fall.

### WHY DO WE NEED TO EVALUATE?

The need to monitor and evaluate code performance has often been an afterthought or a “neverthought.” Traditional planning and zoning practice had relied on the “rightness” of plans and codes and deferred to longer-term evaluation, most often in retrospect 10, 15, or 20 years down the road. This was the length of time it would take for the plan and code to be realized, and it was thought that any earlier comprehensive analysis and evaluation would be somewhat premature. Codes became sacrosanct as the regulatory expression of

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long-term plans. When amendments did occur, they were often incremental and reactive, sometimes addressing individual situations, sometimes correcting flaws, and sometimes bearing no relationship at all to sound planning and land-use practice.

Many older codes were adopted under this long-range view of planning at a time when societal change occurred at a considerably slower rate than today. To remain pertinent and effective, contemporary codes need to adapt and adjust frequently to accommodate changes, particularly those associated with technology. Zoning codes do not cause

action or change, but zoning can accommodate change and adjust to fluctuating markets. In terms of process, zoning can also facilitate change. In its most traditional guise it can prevent, proscribe, and prohibit with amazing ease and exactitude. Indeed, one of the popular criticisms of zoning is that over time it has been counterproductive. Zoning codes often discourage, if not prevent, the very things that make cities vibrant and livable, like mixed use, high density, and reliance on public transport. But what is desirable to accommodate, facilitate, or prevent is subject to change, not only in technologies but in market preference. It is difficult, if not impossible, to be poised to make such adjustments without knowing how the code is working; the result is a dire need for quality evaluation of code performance and effectiveness.

At the same time, drafting and adopting a zoning code is anything but an exact science, especially when considered in the context of a constantly and rapidly changing world. New approaches effectively become trial balloons. We consider problems we would like to fix, situations we would like to address, or changes we would like to accommodate. We then think of alternative ways to accomplish these things and choose one. Then we experiment. The written code is but a theoretical blueprint that accrues meaning and has effect only as it is put into use. At that point, the feedback on the experiment begins and monitoring becomes necessary. A more common view of codes might espouse that, after months of drafting, discussion, and perhaps consultant input, there should be no doubt that the code is a finely tuned mechanism and destined for future success. Review and critique would be needed only at some future time by a new group of designers with the latest ideas or trends. Today, however, there is a need to plan for change. One way is to include adequate monitoring and evaluation systems as integral parts of a code revision project.

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### About the Author

Arthur Ientelucci is director of zoning for the City of Rochester, New York.

### WHAT TO DO

The single most important step is to acknowledge the need to evaluate, make a clear commitment to do so, and then mandate that commitment in the code. Planners often talk about monitoring and evaluation, but a plan to do so is often lost in the shuffle of code revision and the morass of codesmithing paperwork, not to mention the hovering anxiety of trying to finish a revision project. Further, the focus on administering the new code immediately after adoption—and after the long endurance run of drafting—often obliterates any thoughts of evaluation. The mentality is, "Let's just get it done." No one really wants to shop the day after Christmas, but those who do reap the benefits when the next holiday season rolls around. When planning for a comprehensive code revision, think about a code evaluation plan with the same energy.

Mandating an evaluation report with a deadline or at fixed intervals following adoption is necessary. It ensures that the evaluation will not be ignored or forgotten. It also provides for a concrete expression of the commitment to monitor and evaluate. It can also be helpful in gaining consensus on some of the more contentious issues associated with the new regulations. It assures both the public and decision makers that there is a clear, agreed-upon time after implementation when there will be more discussion—and proof of what is working and what is not.

Although we mandated a review after 24 months, our code did not specify review methods, nor did it give direction as to how the report was to be approached. A plan for conducting the monitoring and evaluation of a code will suggest ways that data can be gener-

ated during the regular course of administration. If the evaluation plan is given the same attention as drafting the regulations, it is easy enough to specify up front what the parameters of the report should be. I suggest that requests for proposals for code revision assistance include specifications for a continuing evaluation plan following adoption.

Of course, such proposals may not always be popular. New codes can often be controversial or contentious. Politically, community leaders may be averse to putting the cards on the table at a specified time, particularly if failure must be acknowledged. In addition, some code provisions may inherently be difficult to measure in terms of success or failure, and the effect of external forces or developments on code performance needs to be assessed and accounted for or discounted, depending on the circumstances. Every effort should be made during the adoption process to define what is to be measured and how. Different methods may work for certain regulations than for others. The devil lies in the details.

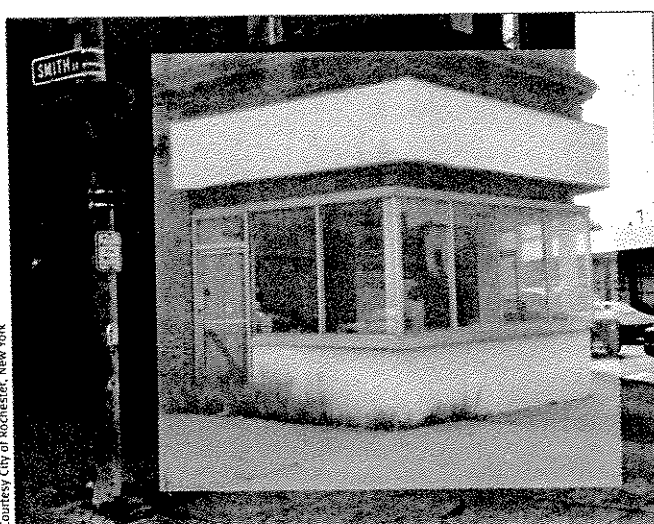
### MORE THAN NUMBERS

Effective evaluation and monitoring of a code consists of more than producing reports in a specified format and at certain intervals. It is not just a numbers game. It should go beyond numerical data and percentages and attempt to look carefully at individual cases and experiences. While there is a place for quantitative analysis, particularly for certain code provisions, it is the qualitative analysis that lends itself best to an understanding of how the code is affecting the community and effecting the plan. Numbers and percentages alone cannot account for motivations, social situations,

market sensitivities, or the human condition. A qualitative evaluation should pay close attention to the results that the code was intended to achieve. It should consider experience and try to reduce the gap between theory and practice. Planners can obtain data from experience, personal contact, discussions, interviews, and detailed document analysis. They should emphasize the particulars, meanings, and descriptions. To this extent, evaluating a code is more art than science, more craft than calculation. Explanation replaces measurement and understanding replaces statistics. The process should be participatory and engage all players and stakeholders.

The evaluation should challenge the theories, policies, and objectives upon which the code is based and consider the experience of actual practice. It may lead to a reconsideration of the theory or an adjustment to the tools, or both. The idea is to understand how things are working and whether the code is meeting its expectations. Did we do what we said we would do? Could it have been approached differently? But even this is not enough. A useful recommendation must be part of any evaluation.

The recommendation may be directed toward things that are going well or that are not; it may suggest curative action or state that the code feature is "right on" at that point. It may simply suggest a wait-and-see approach and concede that more time for analysis and understanding is needed before a recommendation can be made. In our case, 24 months proved to be too soon to analyze fully all aspects of the code. It was, however, enough time to gain a level of comfort that the new approaches were conceptually the right ones.



- ➡ The Lyell building in northwest Rochester is in a commercial area that was brought into the Center City with the 2003 code revision. Its renovation reflects the code's design criteria.

Numbers do have a place in the evaluation, even though they are not enough by themselves. Their purpose is less to serve as a basis for drawing conclusions than as an indicator of a need for analysis and to look deeper for causal relationships. For example, in certain cases a dearth of variance requests related to a particular provision may suggest its validity. On the other hand, a weakness in the code may result in easy compliance. This must be weighed against the code provision's purpose and intent. A large volume of variance requests and approvals may suggest that the provision is not working or not practical. But this, too, can be misleading unless each case is reviewed carefully in terms of context, outside influences, and peculiar circumstances. Sometimes variations, especially in a flexible code format focused on results and performance, are necessary and do not prevent conformance with the code's intent. What may on the surface be read as a need to amend may prove to be merely the need for minor modifications.

## BASICS

The basic approach to a qualitative evaluation of a code can be summed up in two words: observation and inquiry. This approach heavily weighs direct observation on the part of the evaluator. Interviews with code users, and careful reviews of documents, approvals, findings, and decisions

The evaluator may observe significant strides in the direction of achieving the purpose and goals of the code by noting the quality of submissions, understanding the attitude of applicants and decision makers, and cataloguing the physical results of applying the new regulation. For example, we realized that the design focus of our new code had raised the bar with respect to the quality of initial project submissions compared to those submitted under the previous ordinance. The turn-of-the-century Lyell building in the illustration above had been used for commercial purposes over the years, but the character of the building had been diminished by facade treatments that complied with the code but were less than appealing. The latest renovation illustrates compliance with the code's design criteria in an as-of-right rehabilitation and reuse. Clearly, both in terms of the quality of the submission and the redevelopment itself, the bar had been raised.

No doubt, the public's extensive involvement in drafting the code and significant education efforts contributed to this. However, such examples have shown that applicants understand what the code is trying to achieve. Rather than having to "force feed" the new design regulations, as some critics had warned, there was a clear reflection of a higher level of awareness with respect to urban design. Applications incorporated the

guidelines and standards before the initial review and comment by staff. This was an observable pattern in many submissions and was a basic indicator of a general level of acceptance, not resistance. This measure of success would be difficult to verify through a purely quantitative approach.

A completed project can show the strength of a regulation or uncover its weakness, and can shed light on how well a theory works in real-world situations. Case studies that focus on readily observable results are particularly useful in this type of analysis.

Observing the code's processes as they affect these cases can also yield important information. This is real-time, day-to-day observation. It is not just a matter of expediency, but of the quality and depth of review in relation to the particular type of application presented. How fluid is the process? Does it facilitate or is it cumbersome? Does it provide for adequate and timely public participation? Is it comprehensive, equitable, and fair? Does it provide the decision makers what they need to assess projects and make determinations in an expeditious yet thorough manner? Is the process properly synchronized with the purpose of the regulation? What adjustments need to be made?

In addition to direct observation, the interview is a very important part of a qualitative code evaluation. All of the players involved in various applications can be

asked for their opinions about code standards, application requirements, process timelines, etc. Applicants, attorneys, plan preparers, and interested neighbors can offer informative comments. When this is done on a regular basis, themes become apparent that shed light on the effectiveness of the code and its processes. Staff comments cannot be underestimated. Ask them to keep regular notes about their experiences in administering the code and to record recommendations for modification. This can be done informally or by using checklists. Interviews with board and commission members provide another excellent source of feedback. These citizen volunteers see all types of cases applied in many different circumstances. They are great observers

of the process and a good gauge of your code's performance.

For example, our city planning commission questioned the need for requiring a special permit to exceed the new parking cap applied by the code. The commission had approved all the requests, possibly indicating that these actions should not require a special permit or that the cap was too low. After a detailed analysis of each case, we found that while there was a need for adjustment, abolishing or changing the cap was not yet warranted.

You can also learn a great deal by studying the case files, the approvals and denials, and the findings and assessments. These are the written records of the code's performance. You can review each case for

special circumstances and influences that affect decisions and shed light on the code's effectiveness.

Overlaid on this basic approach is the need for continual public participation. In our case, we tried to ask everybody we had talked to in drafting the code, "How is it working?" Inviting the public to participate in the evaluation lends credibility to the results. The viewpoints and input from neighborhood groups and stakeholders, including local architects, engineers, landscape architects, attorneys, planning groups, and developers, serve as checks and balances against the potentially skewed viewpoint of an in-house evaluator or one retained by the agency administering the code.

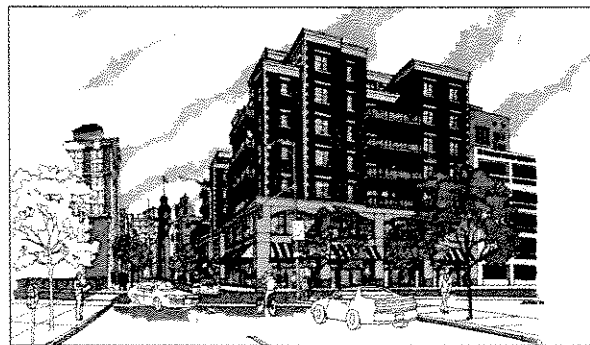
## CENTER CITY DESIGN CRITERIA

These case studies were developed to assess the effectiveness of the Center City design criteria and a process built to include both certainty and flexibility.

The Sagamore on East (Case Study 1) is currently under construction, and is an example of a project that was designed using the Center City Design Criteria. It reflects everything the plan and code intended to achieve in a major new Center City building. It moved through the approval process in fewer than 60 days. This project illustrates the effectiveness of the design criteria and the promise of fast-track processing for projects meeting those criteria.

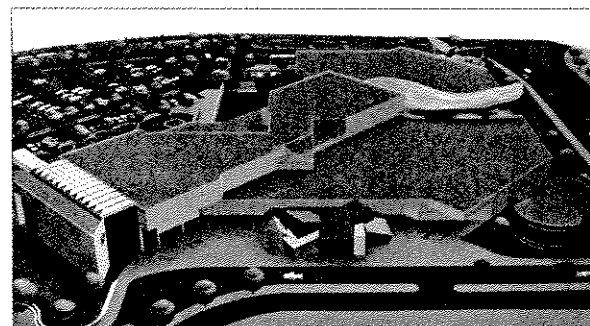
At the other end of the spectrum are the additions to the Strong Museum. This project was handled using the same process as the Sagamore on East project, yet it represents a complete deviation from the Center City design criteria and reflects the ability of the process to accommodate unique architectural statements. The Strong Museum is a unique use in a unique downtown setting, and the process and design controls of the Center City District did not inhibit its creativity or extend the time it took to approve the project.

Somewhere between those two cases is the connecting, infill building of Phoenix Graphics. This provided a much more subtle example of the same regulation and process at work and illustrates the importance and contribution of well-designed, smaller infill projects or commercial frontages (John Steinmetz)



CJS Architects

*Case Study 1: The mixed-use Sagamore on East is a prime example of the type of building and design that the new code is intended to encourage.*



CJS Architects

*Case Study 2: The creative Strong Museum addition was achieved through a flexible design review process.*



Parthi Partners/Strick

*Case Study 3: Phoenix Graphics is an example of a well-designed infill project that seamlessly blends old and new elements.*

## CASE STUDIES

Planners should evaluate a zoning code from a practical viewpoint with attention to the many situations that evolve as the code takes effect. Qualitative evaluation recognizes that an application is not just an application and a decision is not just a decision. Each case tells its own story. The case study provides an excellent approach to qualitative code analysis. Case studies should consist primarily of photos and graphics. Sometimes before and after comparisons are useful. At

other times, comparing a case with a generic project that meets the objectives and intent of the code can suffice. Case studies illustrate the code's activity and generate interest and involvement that purely quantitative analysis and narrative cannot. Case studies provide a link between theory and experience, between idea and reality. They provide an opportunity to view code performance in a concrete context. They are a practical way to communicate quality performance and to display code applications. Case studies should

be concise, precise, and clearly illustrated to have the greatest effect and usefulness. Well-done case studies are educational and lead to viewpoints and solutions that are based on real-life conditions.

## CONCLUSION

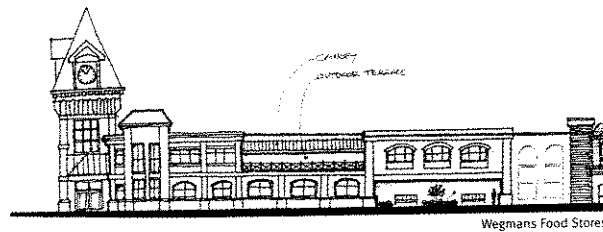
A commitment to ongoing monitoring and evaluation is an essential component of a code revision project. The codification of that commitment is also essential. Indeed, these are the starting points. The reflection of suc-

## CODIFIED STANDARDS

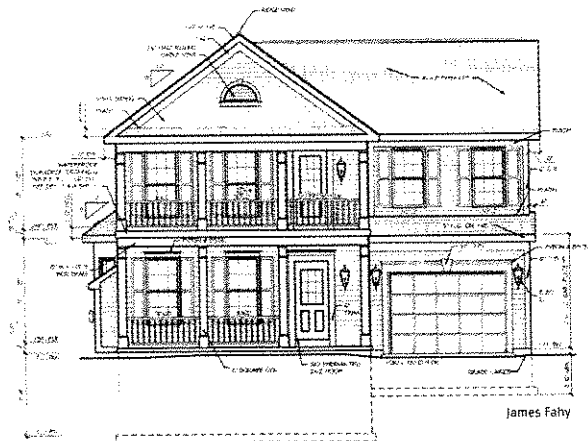
When property owners and developers have codified standards and graphics to refer to, it's more likely they will incorporate those standards into their plans from the start. This gives applicants a better idea of the review requirements and timelines they face. Rochester's new design regulations have raised the bar for both the quality of submissions and public expectations. This is illustrated very well in the case of a recent proposal for a large-scale supermarket, compared to an unfortunate and unsuccessful earlier design.

Overall, the quality of development proposals has improved as a result of the citywide design requirements. Applicants often prefer to conform to the requirements rather than go through lengthy variance or modification approval processes. The staff provides technical assistance and guidance in an effort to achieve desired results in a code-compliant and economical way. This is evidenced by Case Study 5, where significant changes were made to the plans for a single-family dwelling to make it fit in the context of the neighborhood.

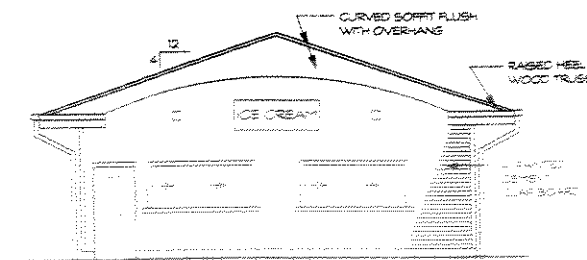
Case Study 6 addresses the issue of the universal application of design standards and guidelines throughout the city regardless of a particular neighborhood's economic status. In the past, projects in somewhat distressed areas would be approved based on the "something is better than nothing" approach. This case study shows a project that was turned down for not meeting the guidelines for the historic district. The project was then revised to meet the guidelines and was approved.



*Case Study 4: The plans for Wegman's supermarket demonstrate an improved quality of submissions and an attempt to meet new design guidelines.*



*Case Study 5: Changes to the code make this single-family infill compatible with the character of the Wilder Terrace neighborhood.*



*Case Study 6: This plan for an ice cream shop on Genesee Street aligns with the historic district guidelines.*



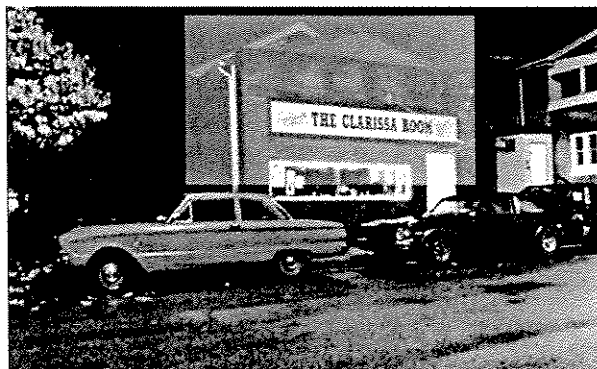
cess is seen more in the story told by the qualitative analysis of actual experience than in any simple calculus. Implementation and evaluation should be thought of as synonymous. The threads of planning, code adoption, and evaluation need to be tightly woven. Effective and timely evaluation is needed so we can adjust coherently to change and not repeat the mistakes of zoning past. We can no longer afford to "wait and see." We must constantly challenge our purpose, intent, goals, and objectives, and

ally, we need to ask whether our regulatory mechanisms are fair and equitable, adhere to the tenets of due process, and are within the bounds of reason.

The importance of such awareness is no better underscored than by a looming anti-planning and regulation sentiment that can claim its greatest and most resounding victory in the passage of Measure 37 in Oregon. As Edward Sullivan wrote in *Planning and Environmental Law* (March 2005), "Policy makers and planners must be

to bear to achieve a public purpose stretches the realm of credibility, even if a court were to find it constitutional. Those concerned with sound land-use policy need to develop mechanisms to alleviate any undue burden that may arise through the enforcement of land-use laws." One way we can respond is to incorporate monitoring and evaluation systems into our land-use regulations so that we can recognize problems as they arise and take appropriate action to alleviate them. Monitoring and evaluating codes and regulations are ways to respond to the lessons of Measure 37. By keeping tabs, we will also be sure that our regulations and processes remain reasonable and realistic in the context of the larger framework of technology, economics, law, and society.

## THE 2003 ZONING CODE



*Case Study 7: The Clarissa Room is an active neighborhood blues and jazz venue and a visible remembrance of times past.*

value, or potential to provide neighborhood services and work opportunities, are eligible for reuse rather than elimination. Case Study 7 describes the revival of a neighborhood music club with deep cultural roots in the community. The new code accommodated its rebirth as a successful jazz and blues venue.

*John Steinmetz*

The 2003 zoning code took a new approach to regulating nonconformities. It recognized that not all nonconformities are inherently problematic, nor is it necessary to eliminate them to achieve a coherent land-use plan. The new code takes a case-by-case approach, acknowledging that some nonconformities, due to their economic viability, historic character, architectural

assess and reassess the code's relationship to the plan and policy. Practitioners need to be observers of technology and markets and attuned to public need. This is something more than administering a code and processing applications. It is a commitment to the delivery of quality results and to add value to the community.

We also have an ethical responsibility to continually test what we do and ensure that it continues to be pertinent and to promote the goals for which we plan and regulate. The AICP Code of Ethics instructs that we should have special concern for the long-range consequences of our actions. There is no better way to do this than by keeping a pulse bear on the impact of our rules and methods. Profession-

clear-headed about the reasons, as well as the implications, for the passage of Measure 37 in Oregon, for if it can happen in Oregon—where most citizens support planning—it can happen anywhere." He adds that the political lessons learned reflect the loss of connection between citizens and the land-use program over a 30-year period; the need for political vigilance; and the constant need to justify planning and regulations. Professor Harvey Jacobs, in his discussion about the fight over land in America, exhorts that, "As planners we need to recognize that there are occasions of abusive administrative practices in the implementation of land-use laws, and there are instances when the burden that individual landowners are asked

Cover photo by Arpad Benedek. A new zoning code is a work in progress.

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